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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/524,918	07/05/2005	Todd Stout	67101-002	2982
26096	7590	08/20/2007	EXAMINER	
CARLSON, GASKEY & OLDS, P.C.			ASTORINO, MICHAEL C	
400 WEST MAPLE ROAD			ART UNIT	PAPER NUMBER
SUITE 350			3736	
BIRMINGHAM, MI 48009				
MAIL DATE		DELIVERY MODE		
08/20/2007		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/524,918	STOUT, TODD
	<b>Examiner</b>	<b>Art Unit</b>
	Michael C. Astorino	3736

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 10 July 2007.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-38 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 10 July 2007 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date _____.	6) <input type="checkbox"/> Other: _____.

## **DETAILED ACTION**

Examiner acknowledges the response filed July 10, 2007.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 33 and 37 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear to the examiner what the Applicant means by "wherein the occurrences of the at least one health symptom is the number of the at least one health symptom."

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1-31, 33-35, and 37-38 are rejected under 35 U.S.C. 102(a) as being anticipated by Goldenberg et al. "Early statistical detection of anthrax outbreaks by tracking over-the-counter medication sales" Proceedings of the National Academy of Sciences of the United States of America.

Goldenberg et al. teaches the use of an over the counter medication sales statistical detection system of detecting an anthrax attack. This data complied includes historical statistical data and present data to see if the volume of sales is indicative of an outbreak. Monitoring symptoms based on inferences of OTC medicine sales is sufficient to reject the limitation, "monitoring occurrences of at least one health symptom;" since OTC medication purchases are symptoms of fever, nausea, vomiting, headaches, etc.

In regards to claim 2, the system itself is considered by the Examiner to be an emergency services dispatcher since the identification of a outbreak is public health information set up as an emergency service run by a dispatcher.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 32 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goldenberg et al. "Early statistical detection of anthrax outbreaks by tracking over-the-counter medication sales" Proceedings of the National Academy of Sciences of the United States of America.

Goldenberg et al. is silent as to changing a level of sensitivity based on the national threat level, however Goldenberg et al. does include a step of adjusting a sensitivity of the trigger value, see figure 3 and disclosure on p5239 regarding threshold and margin of error. However, It

would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method and system of Goldenberg et al. to incorporate an adjustment in the sensitivity level of the trigger value on a national threat level, because a person of ordinary skill has good reason to pursue the known options within his or her technical grasp and if this leads to the anticipated success. Since it would have been obvious to one of ordinary skill in the art to try the modification it is likely the product is not innovative but ordinary and common sense. This is supported by Goldenberg et al. because Goldenberg et al. states on page 5240, “ . . . biosurveillance systems will incorporate information from multiple sources, including public health and non-traditional data.”

#### *Response to Arguments*

Applicant's arguments filed July 10, 2007 have been fully considered but they are not persuasive.

Applicant argues the applied prior art reference fails to reject the claims because “sales of the OTC would be over-inclusive or under-inclusive of the occurrences of health symptoms.” Regardless of Applicants opinion concerning the effectiveness of the system the applied reference nevertheless rejects the claim.

The applied prior art uses over the counter (OTC) medication to make informed judgments or inferences regarding symptoms of the public as a whole. In fact the reference states on page 5238, “Tracking Grocery Data,” “[t]hird, although grocery and OTC sales do not measure illness directly, we might infer specific symptoms by purchasers . . .” Claim 1, recites “a) monitoring occurrences of at least one health symptom,” and Goldenberg et al.’s inferences

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to track symptoms is sufficient to state that symptoms are being monitored. Claim 22 is rejected on substantially the same basis.

Additionally Applicant states “[t]herefore, the sale of OTC medicine does not indicate the occurrence of the health symptoms that an individual is experiencing.” As stated above, inferences to track symptom is sufficient to state that symptoms are being monitored and as such reject the claim. Nonetheless this statement sheds light on the Applicant’s position.

The claims never state anything regarding an individual. The claim is silent regarding the individual’s symptoms, parameters or how the information regarding symptoms is generated or extracted. As such the Applicant’s assertion lacks foundation because it is tied to an individual which is not claimed. However, the examiner agrees that differences exist between the description of the invention in Applicant’s specification and the applied prior art. But the differences are not yet asserted in the claims.

**The Applicant is invited to request an interview to discuss suggestions to overcome the applied prior art.** For example, it is quite clear the reference would fail to reject a limitation in claim 1 stating, “a) monitoring occurrences of at least one health symptom by measuring a physiological parameter of an individual,” or “a) monitoring occurrences of at least one health symptom without making inferences of said occurrences.”

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael C. Astorino whose telephone number is 571-272-4723. The examiner can normally be reached on Monday-Friday, 8:30AM to 3:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on 571-272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MA

August 14, 2007

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